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Chief Judge Ricardo S. Martinez

APR 16 2018

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

HOON NAMKOONG,

Defendant.

NO. CR18-081RSM

**PLEA AGREEMENT**

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Seth Wilkinson and Matthew Diggs, Assistant United States Attorneys, HOON NAMKOONG, and his attorney, Wayne Fricke, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to a charge brought by the United States Attorney in an Information.

2. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the charge of Conspiracy to Violate the Lacey Act, under 18 U.S.C. § 371, as charged in Count 1 of the Information.

1 By entering a plea of guilty, Defendant hereby waives all objections to the form of  
2 the charging document. Defendant further understands that before entering the guilty  
3 plea, Defendant will be placed under oath. Any statement given by Defendant under oath  
4 may be used by the United States in a prosecution for perjury or false statement.

5 3. **Elements of the Offense.** The elements of the offense of conspiracy to  
6 violate Title 16, United States Code, Section 3372(a) and 3372(d), as charged in Count 1,  
7 in violation of Title 18, United States Code, Section 371 are as follows:

8 First, there was an agreement between two or more persons to violate the  
9 following laws:

10 A. Title 16, United States Code, Section 3372(a), as that section relates  
11 to the sale, receipt or acquisition of fish taken, possessed, or transported in  
12 violation of state or tribal law;

13 B. Title 16, United States Code, Section 3372(d), as that section relates  
14 to the false labeling of fish imported or exported, or transported in interstate or  
15 foreign commerce.

16 Second, the defendant became a member of the conspiracy knowing of at least one  
17 of its objects and intending to help accomplish it;

18 Third, one of the members of the conspiracy performed at least one overt act for  
19 the purpose of carrying out the conspiracy.

20 **Elements of the Object Crimes.**

21 **Lacey Act Trafficking Elements (16 U.S.C. § 3372(a)).**

22 a. Defendant imported, exported, sold, received, acquired, or purchased  
23 sea cucumbers in interstate commerce, by knowingly engaging in conduct that involved  
24 the sale, purchase, offer to sell or purchase sea cucumbers, or the intent to sell or  
purchase sea cucumbers;

25 b. Defendant knew that the sea cucumbers had been taken, possessed,  
26 transported or sold in violation of state or tribal law; and

27 c. The market value of the sea cucumbers exceeded \$350.  
28

**Lacey Act False Labeling Elements (16 U.S.C. § 3372(d)).**

- a. Defendant made or submitted any false record for any sea cucumbers;
- b. The false record involved sea cucumbers that had been or were intended to be exported, or had been or were intended to be transported in interstate commerce; and,
- c. The market value of the sea cucumbers was greater than \$350.

4. **The Penalties.** Defendant understands that the statutory penalties applicable to the offense of Conspiracy to Violate the Lacey Act in violation of Title 18, United States Code, Sections 371 are as follows: A term of imprisonment of up to five years, a fine of up to \$250,000, a period of supervision following release from prison of up to three years, and a mandatory special assessment of \$100 dollars. If a probationary sentence is imposed, the probation period can be up to five years. Defendant agrees that the special assessment shall be paid at or before the time of sentencing.

Defendant understands that supervised release is a period of time following imprisonment during which Defendant will be subject to certain restrictive conditions and requirements. Defendant further understands that if supervised release is imposed and Defendant violates one or more of the conditions or requirements, Defendant could be returned to prison for all or part of the term of supervised release that was originally imposed. This could result in Defendant's serving a total term of imprisonment greater than the statutory maximum stated above.

Defendant understands that as a part of any sentence, in addition to any term of imprisonment and/or fine that is imposed, the Court may order Defendant to pay restitution to any victim of the offense, as required by law.

Defendant agrees that any monetary penalty the Court imposes, including the special assessment, fine, costs, or restitution, is due and payable immediately and further agrees to submit a completed Financial Statement of Debtor form as requested by the United States Attorney's Office.

1       **5. Rights Waived by Pleading Guilty.** Defendant understands that by  
2 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 3           a. The right to plead not guilty and to persist in a plea of not guilty;
- 4           b. The right to a speedy and public trial before a jury of his peers;
- 5           c. The right to the effective assistance of counsel at trial, including, if  
6 Defendant could not afford an attorney, the right to have the Court  
7 appoint one for Defendant;
- 8           d. The right to be presumed innocent until guilt has been established  
9 beyond a reasonable doubt at trial;
- 10          e. The right to confront and cross-examine witnesses against Defendant  
11 at trial;
- 12          f. The right to compel or subpoena witnesses to appear on defendant's  
13 behalf at trial;
- 14          g. The right to testify or to remain silent at trial, at which trial such  
15 silence could not be used against Defendant; and
- 16          h. The right to appeal a finding of guilt or any pretrial rulings.

17       **6. Ultimate Sentence.** Defendant acknowledges that no one has promised or  
18 guaranteed what sentence the Court will impose.

19       **7. Forfeiture.** The Defendant understands that the forfeiture of property is  
20 part of the sentence imposed in this case. The Defendant agrees to forfeit to the United  
21 States immediately all of his right, title, and interest in any and all property that was  
22 involved in and/or used, or intended to be used, to commit or to facilitate the commission  
23 of the offense. The Defendant recognizes all such property is forfeitable pursuant to Title  
24 16, United States Code, Section 3374 and Title 28, United States Code, Section 2461(c),  
25 and includes but is not limited to:

- 26           a. all fish or wildlife imported, exported, transported, sold, received, acquired,  
27 or purchased contrary to the provisions of Title 16, United States Code,  
28 Section 3372, or any regulation issued pursuant thereto; and,

1       b.     all vehicles, vessels and other equipment used to aid in the importing,  
2             exporting, transporting, selling, receiving, acquiring, or purchasing of  
3             wildlife.

4     The Defendant recognizes that, pursuant to Title 16, United States Code, Section 3374(c),  
5     he is liable for all costs the United States has incurred for the storage, care, and  
6     maintenance of wildlife seized in connection with the alleged violations.

7       The Defendant also agrees to forfeit to the United States immediately all of his  
8     right, title, and interest in any and all proceeds of the offense. The Defendant recognizes  
9     all such property is forfeitable pursuant to Title 18, United States Code, Section  
10    981(a)(1)(C) and Title 28, United States Code, Section 2461(c), and includes but is not  
11    limited to:

12       c.     A sum of money in the amount of \$1,499,999, reflecting the proceeds the  
13             Defendant obtained as a result of the offense.

14    The Defendant agrees to fully assist the United States in the forfeiture of the  
15    above-listed property and to take whatever steps are necessary to pass clear title to the  
16    United States, including but not limited to: surrendering title and executing any  
17    documents necessary to effectuate forfeiture; assisting in bringing any assets located  
18    outside the United States within the jurisdiction of the United States; and, taking  
19    whatever steps are necessary to ensure that forfeitable property is not sold, disbursed,  
20    wasted, hidden, or otherwise made unavailable for forfeiture. The Defendant agrees not  
21    to file a claim to any of the above-listed property in any civil forfeiture proceeding,  
22    administrative or judicial, that may be initiated.

23    The United States reserves its right to proceed against any remaining assets not  
24    identified in this Plea Agreement, including any property in which Defendant has any  
25    interest or control, if that property constitutes or is traceable to proceeds of the offense  
26    and/or facilitated or was involved in the offense.

27    The United States agrees to recommend that the net proceeds from the forfeiture  
28    and sale of the above-listed wildlife, vehicles, vessels and other equipment, as well as any

1 amounts collected pursuant to the sum of money, be applied to the Defendant's restitution  
2 obligation discussed below.

3       8.     **Restitution.** Defendant shall make restitution in an amount and to payees  
4 to be determined at sentencing, not to exceed the total amount of one million, four  
5 hundred ninety-nine thousand, nine hundred and ninety-nine dollars (\$1,499,999), with  
6 credit for any amount of restitution Defendant has already paid. The total amount of  
7 restitution ordered shall be due and payable immediately and shall be paid in accordance  
8 with a schedule of payments as proposed by the United States Probation office and  
9 ordered by the Court.

10       9.     **Statement of Facts.** Defendant admits he is guilty of the charged offense.  
11 The parties agree on the following facts:

12     **A.     Legal Background**

13       Sea cucumbers are classified as "shellfish" under Washington State law. RCW  
14 77.12.047. Washington State law requires that all persons originally receiving shellfish  
15 in Washington State (excluding retail transactions) be licensed wholesale fish buyers.  
16 Washington State law also requires that licensed wholesale fish buyers immediately,  
17 completely, and accurately complete a fish receiving ticket (fish ticket), for each and  
18 every purchase or receipt of shellfish. WAC 220-352-180(1)(b)(i). If the wholesale fish  
19 buyer purchases the sea cucumbers from a fisher who is a licensed tribal fish buyer, a fish  
20 ticket is required to be filled out by the licensed wholesale fish dealer if the tribal fish  
21 buyer has not already filled out a fish ticket and provided a copy of the ticket or the ticket  
22 number to the secondary receiver as proof. WAC 220-352-180(1)(b)(ii). The secondary  
23 receiver must have a copy of the fish ticket or documentation of the purchase including  
24 the amount and species of the fish or shellfish purchased. These records must be retained  
25 for three years. RCW 77.15.568(3).

26       Tribal laws, including the laws of the Lummi Nation, likewise require the accurate  
27 reporting on fish tickets of the sea cucumber harvest. Section 10.07.240 of the Lummi  
28

1 Nation Code of Laws requires that the seller and the buyer in any fish or shellfish sale  
2 must ensure that the sale is accurately reported on the fish ticket.

3 The fish ticket must be signed by both the fisher and wholesale fish buyer, under  
4 penalty of perjury. Failure to properly and accurately prepare a fish ticket, or to submit  
5 the ticket as required by law, is a violation of Washington State law. RCW 77.15.630  
6 (unlawful fish/shellfish catch accounting).

7 **B. Orient Seafood Production and HOON NAMKOONG**

8 Orient Seafood Production (OSP) was a Fife, Washington-based wholesale  
9 seafood business owned and controlled by defendant HOON NAMKOONG. OSP was a  
10 licensed wholesale fish buyer under Washington State law, and the business of OSP  
11 included the purchase, transportation, processing, sale and export of sea cucumbers.  
12 HOON NAMKOONG was engaged in the business of purchasing, processing, selling,  
13 exporting and transporting fish, including sea cucumbers. HOON NAMKOONG's  
14 activities were facilitated in part through his ownership and operation of OSP.

15 **C. The Conspiracy**

16 Beginning on a date unknown, but no later than August 2014, and continuing until  
17 on or about November 21, 2016, within the Western District of Washington, and  
18 elsewhere, defendant HOON NAMKOONG did knowingly conspire, combine,  
19 confederate and agree with other persons to: (a) violate Section 3372(a) of the Lacey Act,  
20 as that section relates to acquiring, selling, and transporting sea cucumbers, valued at  
21 greater than \$350, which HOON NAMKOONG knew had been taken, possessed and sold  
22 in violation of Washington State law and Lummi Tribal law; and (b) violate Section  
23 3372(d) of the Lacey Act, as that section relates to making and submitting false records  
24 for sea cucumbers with a market value in excess of \$350, which were and were intended  
25 to be transported in interstate and foreign commerce.  
26  
27  
28

1 It was part of the conspiracy that HOON NAMKOONG arranged with state and  
2 tribal fishers to purchase sea cucumbers at various locations within the Western District  
3 of Washington.

4 It was further part of the conspiracy that HOON NAMKOONG purchased sea  
5 cucumbers from state and tribal fishers and intentionally underreported the total amount  
6 purchased on corresponding fish tickets, by a variety of means, including the following:

7 a. HOON NAMKOONG purchased sea cucumbers partially by check  
8 and partially in cash. On those occasions, HOON NAMKOONG wrote a check for less  
9 than the total amount of the purchase. HOON NAMKOONG paid cash for the remainder  
10 of the total amount of the purchase. In those instances, HOON NAMKOONG and co-  
11 conspirators prepared and submitted fish tickets, which fraudulently reported less than the  
12 total amount of sea cucumbers purchased, and often purposefully omitted those sea  
13 cucumbers purchased in cash.

14 b. HOON NAMKOONG purchased sea cucumbers from co-  
15 conspirators for which HOON NAMKOONG and his co-conspirators failed to prepare  
16 and submit any corresponding fish tickets.

17 c. HOON NAMKOONG and his co-conspirators prepared and  
18 submitted fish tickets for less than the total amount of sea cucumbers purchased by  
19 HOON NAMKOONG on a given day.

20 It was further part of the conspiracy that HOON NAMKOONG transported the sea  
21 cucumbers he purchased from the harvest locations to his facility in Fife, Washington for  
22 processing by drying, salting and other means.

23 It was further part of the conspiracy that HOON NAMKOONG sold and caused to  
24 be sold and transported and caused to be transported, and exported and caused to be  
25 exported, the processed sea cucumbers, which had not been reported on fish tickets, in  
26 interstate and foreign commerce to commercial wholesale seafood buyers in the United  
27 States and Asia.

28 **D. Overt Act**

On or about September 3, 2015, in Whatcom County, HOON NAMKOONG  
wrote a check to fisher C.F. in the amount of \$2,935. The memo line of the check



1 indicated the payment was for 1,387 pounds of product and contained the notation "paid  
2 \$4,000 cash."

3 On or about September 3, 2015, in Whatcom County, C.F. completed a fish ticket  
4 for the above purchase, which showed a purchase of 552 pounds of sea cucumbers for a  
5 total price of \$2,760.

6 **E. Post-Processing Market Value of Sea Cucumbers Taken In Violation of State**  
7 **Law.**

8 The parties agree that the total weight of the unreported sea cucumber catch  
9 purchased by HOON NAMKOONG during the conspiracy was approximately 250,000  
10 pounds of unprocessed sea cucumber.

11 The parties agree that the wholesale market value, after processing, of the sea  
12 cucumbers possessed, transported, and sold by HOON NAMKOONG, which had been  
13 taken, possessed, and sold in violation of Washington State law, during the conspiracy,  
14 was approximately one million, four hundred ninety-nine thousand, nine hundred and  
15 ninety-nine dollars (\$1,499,999).

16 10. **United States Sentencing Guidelines.** Defendant understands and  
17 acknowledges that the Court must consider the sentencing range calculated under the  
18 United States Sentencing Guidelines and possible departures under the Sentencing  
19 Guidelines together with the other factors set forth in Title 18, United States Code,  
20 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the  
21 history and characteristics of the defendant; (3) the need for the sentence to reflect the  
22 seriousness of the offense, to promote respect for the law, and to provide just punishment  
23 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal  
24 conduct; (5) the need for the sentence to protect the public from further crimes of the  
25 defendant; (6) the need to provide the defendant with educational and vocational training,  
26 medical care, or other correctional treatment in the most effective manner; (7) the kinds  
27 of sentences available; (8) the need to provide restitution to victims; and (9) the need to  
28

1 | avoid unwarranted sentence disparity among defendants involved in similar conduct who  
2 | have similar records. Accordingly, Defendant understands and acknowledges that:

3 |         a.       The Court will determine Defendant's applicable Sentencing  
4 | Guidelines range at the time of sentencing;

5 |         b.       After consideration of the Sentencing Guidelines and the factors in  
6 | 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the  
7 | maximum term authorized by law;

8 |         c.       The Court is not bound by any recommendation regarding the  
9 | sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
10 | range offered by the parties or the United States Probation Department, or by any  
11 | stipulations or agreements between the parties in this Plea Agreement; and

12 |         d.       Defendant may not withdraw the guilty plea solely because of the  
13 | sentence imposed by the Court.

14 |       11.    **Acceptance of Responsibility.** The United States acknowledges that if  
15 | Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG  
16 | § 3E1.1(b), and if Defendant's offense level exceeds 16, the total offense level should be  
17 | decreased by three levels (or two levels if the offense level is less than 16) because  
18 | Defendant has clearly demonstrated acceptance of responsibility for the offense and has  
19 | assisted the government by timely notifying the authorities of defendant's intention to  
20 | plead guilty.

21 |       12.    **Sentencing Factors.** The parties agree that the following Sentencing  
22 | Guidelines provisions apply to this case:

23 |         a.       The base offense level is six, pursuant to USSG § 2Q2.1(a);

24 |         b.       The offense level should be increased by two levels pursuant to  
25 | USSG § 2Q2.1(b)(1) because the offense was committed for pecuniary gain; and

26 |         c.       The offense level should be increased by fourteen (14) levels based  
27 | on an agreed market value of the illegally trafficked sea cucumbers of more than  
28 |

1 \$550,000 and less than \$1,500,000, pursuant to USSG §§ 2Q2.1(b)(3)(A)(ii) and  
2 2B1.1(b)(1)(H).

3 The parties agree they are free to present arguments regarding the applicability of  
4 all other provisions of the United States Sentencing Guidelines. Defendant understands,  
5 however, that at the time of sentencing, the Court is free to reject these stipulated  
6 adjustments, and is further free to apply additional downward or upward adjustments in  
7 determining Defendant's Sentencing Guidelines range.

8 **13. Sentencing Recommendation.** The United States agrees to recommend a  
9 sentence no greater than thirty (30) months imprisonment. The defendant may  
10 recommend any sentence he chooses. The government is free to make any other  
11 recommendation regarding other portions of Defendant's sentence, including fines, and  
12 restitution, consistent with this Plea Agreement. Defendant understands these  
13 recommendations are not binding on the Court.

14 **14. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,  
15 the United States Attorney's Office for the Western District of Washington agrees not to  
16 prosecute Defendant for any additional offenses known to it as of the time of this  
17 Agreement that are based upon evidence in its possession at this time, and that arise out  
18 of the conduct giving rise to this investigation, and to move to dismiss the remaining  
19 counts in the indictment at the time of sentencing.

20 In this regard, Defendant recognizes the United States has agreed not to prosecute  
21 all of the criminal charges the evidence establishes were committed by Defendant solely  
22 because of the promises made by Defendant in this Agreement. Defendant agrees,  
23 however, that for purposes of preparing the Presentence Report, the United States  
24 Attorney's Office will provide the United States Probation Office with evidence of all  
25 conduct committed by Defendant.

26 Defendant agrees that any charges to be dismissed before or at the time of  
27 sentencing were substantially justified in light of the evidence available to the United  
28 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant

1 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119  
2 (1997).

3       **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if  
4 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea  
5 Agreement and Defendant may be prosecuted for all offenses for which the United States  
6 has evidence. Defendant agrees not to oppose any steps taken by the United States to  
7 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea  
8 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,  
9 Defendant has waived any objection to the re-institution of any charges in the Indictment  
10 that were previously dismissed or any additional charges that had not been prosecuted.

11       Defendant further understands that if, after the date of this Agreement, Defendant  
12 should engage in illegal conduct, or conduct that violates any conditions of release or the  
13 conditions of his confinement, (examples of which include, but are not limited to,  
14 obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
15 pending sentencing, and false statements to law enforcement agents, the Pretrial Services  
16 Officer, Probation Officer, or Court), the United States is free under this Agreement to  
17 file additional charges against Defendant or to seek a sentence that takes such conduct  
18 into consideration by requesting the Court to apply additional adjustments or  
19 enhancements in its Sentencing Guidelines calculations in order to increase the applicable  
20 advisory Guidelines range, and/or by seeking an upward departure or variance from the  
21 calculated advisory Guidelines range. Under these circumstances, the United States is  
22 free to seek such adjustments, enhancements, departures, and/or variances even if  
23 otherwise precluded by the terms of the plea agreement.

24       **16. Waiver of Appellate Rights and Rights to Collateral Attacks.**  
25 Defendant acknowledges that by entering the guilty plea required by this plea agreement,  
26 Defendant waives all rights to appeal from Defendant's conviction and any pretrial  
27 rulings of the court. Defendant further agrees that, provided the court imposes a custodial  
28 sentence that is within or below the Sentencing Guidelines range (or the statutory

1 mandatory minimum, if greater than the Guidelines range) as determined by the court at  
2 the time of sentencing, Defendant waives to the full extent of the law:

3 a. Any right conferred by Title 18, United States Code, § 3742, to  
4 challenge, on direct appeal, the sentence imposed by the court, including any fine,  
5 restitution order, probation or supervised release conditions, or forfeiture order (if  
6 applicable); and

7 b. Any right to bring a collateral attack against the conviction and  
8 sentence, including any restitution order imposed, except as it may relate to the  
9 effectiveness of legal representation; and

10 This waiver does not preclude Defendant from bringing an appropriate motion  
11 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or  
12 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

13 If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
14 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
15 any way, the United States may prosecute Defendant for any counts, including those with  
16 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
17 Agreement.

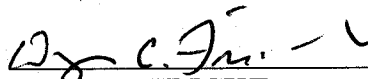
18 17. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into  
19 this Plea Agreement freely and voluntarily and that no threats or promises, other than the  
20 promises contained in this Plea Agreement, were made to induce Defendant to enter the  
21 plea of guilty.

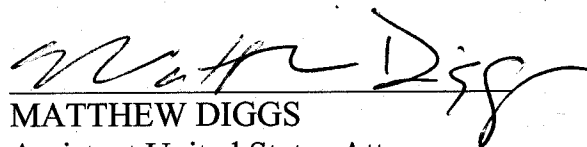
22 18. **Statute of Limitations.** In the event this Agreement is not accepted by the  
23 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,  
24 the statute of limitations shall be deemed to have been tolled from the date of the Plea  
25 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea  
26 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of  
27 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.  
28

1        19.    **Completeness of Agreement.** The United States and Defendant  
2 acknowledge that these terms constitute the entire Plea Agreement between the parties.  
3 This Agreement binds only the United States Attorney's Office for the Western District  
4 of Washington. It does not bind any other United States Attorney's Office or any other  
5 office or agency of the United States, or any state or local prosecutor.

6        Dated: April 16, 2018.

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9 \_\_\_\_\_  
10 HOON NAMKOONG  
11 Defendant

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13 \_\_\_\_\_  
14 WAYNE FRICKE  
15 Attorney for Defendant

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17 \_\_\_\_\_  
18 MATTHEW DIGGS  
19 Assistant United States Attorney  
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